

To: Ms. Kamini Shah, SPE AU 2128
Re: S1.181 Petition for application 09/287,478

Dear Ms. Shah,

This is a supplementary note regarding the S1.181 Petition for 09/287,478, filed 1/12/2010.

I received a call from a Ms. Carolyn Thomas at the USPTO yesterday morning regarding a missing appeal brief fee of \$270. I explained that the appeal process began several years ago and the fee was paid at that time. She seemed satisfied but it resurced another concern I've long had regarding appeal extensions. The form I currently use is both SB/22 and SB/23 which are for 37 CFR 1.136(a) and (b) respectively. I don't think either of these is the correct form for the appeals process, but I hope you may confirm that there has been no fatal defect introduced by their use. In any event, they seem to "work" as the extensions have been granted.

While ruminating on this, it finally dawned on me that Examiner Phan may have had a supportable reason for requiring the \$180 "post-final" fee for the 10/19/2005 IDS submission. As previously noted, the 10/19/2005 IDS contained 5 NPL documents, the first 4 of which meet the criteria as averred in previous appeal briefs as having been discovered in response to examiner's objections less than 3 months prior to filing of the IDS. These first 4 citations constitute evidence that Lawman has a limitation typical of the prior art that is overcome by the present invention. The 5th NPL document, something of an afterthought, is a copy of a web page developed by myself (Rode Consulting, Inc.) which demonstrated Xilinx sponsorship of a site using the invention under discussion. Since the site was developed by me in the ~1999-2000 time frame, obviously it was known to me more than 90 days prior. Although the citation was triggered by examiner's citation of Lawman, I do not believe the rule makes any exception, and so this 5th item must be withdrawn since it conflicts with the 37 CFR 1.97(e)2 statement.

However, it is still desirable to include IDS item 5 as the brief itself refers to it as evidence of Commercial Acquiescence and since the fee has now been paid, the optimal option may be to moot ground 1 of the S1.181 Petition, leaving grounds 2 and 3 in force.

Mr. Cole has referred all petition questions to you. Please let me know how best to withdraw the 37 CFR 1.97(e)2 statement or amend the IDS and appeal brief, as well as withdrawing ground 1 of the petition. If, in fact, it is impossible to admit the IDS, please let me know as soon as possible so that I might file an RCE.

Thank you and best regards,



1/20/2010

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